

CARRS CASE

Being a Brief RELATION of the cause & Sufferings of M^R WILLIAM CARRE

humbly rendered to the consideration of
the hon^{ble} House of Commons, who are the
REPRESENTATIVES of all the
Commons of England.

Together with a Plea against the pretended Jurisdictions, &
singular proceedings of the House of Lords; in which may
seen the Just Rights of every Commoner & FREE-BORN
Subject of England.

*The Habits of the wicked shall destroy them: because they refuse to do Judgement. but
It is Joy to the Just to do Judgement. PROV. 21: 7. 25.*

*Let not our Law judge any man before it hear him, and know what he doeth. 1 John. 7.
Wo to them that smite a man an offender for a word, & lay a snare for him that speaketh
truth: & turn aside the just for a thing of naught. 1 Pet. 2: 12.*

Consider Jeremy. 23: 15, 16, &c.

*Behold I have chastised thee, but not with Sifters; I have chastised thee in the furnace of affliction. And
When he hath tried me, I shall come forth as gold. Job. 23: 10.*

J

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THE
BANKRUPTCY
OF
WILLIAM C. HARRIS
IN
THE
COURT OF CHANCERY
OF THE STATE OF NEW YORK
IN SENATE
JANUARY 1884

To the HON^{ble} The Knight Citizens & Burgeſſes Aſſembled in Parliament.

When I behold this *Hon^{ble} Houſe* as the Chosen & Betruſted Commiſſioners of all the *Commons of England*, in whom alone (by right) reſides the formall & legall power of judging of the weal, ſafety, peace & proſperity of the *Commons of England*, comparing the ſame with the preſent *Houſe of Lords* their violent & irregular practices & dealings with me; and therewithall read over & ſeriously conſider the 29th. *Chapter of Magna Charta*, & the *Petition of Right*, & other the good & juſt known & declared Laws of this Kingdom, made for the *Commons* good, benefit, protection & preſervation of the Lives, Liberties & Eſtates of all the Free-Denizens thereof, It makes my work to ſeem very facile & pleaſant to me:

Now for the clearing up of the juſtneſs of my cauſe in delivering to your *Honours* a *Petition* againſt the *Lord Gerard* & others, who had defrauded not onely *his Ma^{tie}*, but the ſouldiers alſo of ſeverall great ſumms of money, & had committed other high miſdemeanours againſt the *Commons of England*, (The delivering of which *Petition* was the originall & onely cauſe upon which the *Houſe of Lords* have grounded their proceedings againſt me) I ſhall here crave leave to give you a brief *Narrative* of the ſeverall proceedings in the *Houſe of Lords* againſt me, as alſo of thoſe at the *Councill-board*, & at *Common Law*: And then ſhall proceed to ſet before you my *Plea* againſt thoſe actings of the *Lords houſe*: Not doubting but to give you full ſatisfaction, & likewise make it evidently appear to all honeſt & unbyaſſed Engliſhmen,

Englishmen , That the proceeding of the *House of Peers* in my case , is not onely against the known Laws of the Land , but of a dangerous consequence , & a high breach of the priviledges of the *Commons of England*.

But me thinks I hear some *object* & through ignorance or pusillanimity of Spirit judge me a rash & factious-spirited Man for undertaking so mighty hard & difficult a work as to contest with such a torrent of great men conjoined in a *House of Peers*, who claim a greater power than any other *Court of Record* in *England*.]

To such I answer , That the *House of Lords* may be compared to a shallow uneven water , more in noise than substance : for do but distinguish between what is theirs of right , & what by encroachment , & we may soon find that they have deckt themselves with the *Commons* brave feathers ; which being resumed , they would appear no better arrayed than other men , even æquall by Law , & for the most of them , inferiour in knowledge as well as in uprightnes & honesty of conversation.

I shall not here make it my business to uncover the nakednes of the *House of Lords*, in shewing the severall mischiefs happened in old time by their illegall proceedings , or occasioned in our age by their pretended priviledges in protecting themselves & some thousands against their just Creditors & other Complainants to the manifest ruin of many families.

Nor will I trouble you with a Relation of the severall good & æquall laws made for the Government of *Peers* & Noblemen abroad beyond the Seas, even under the worst of Governments: As for instance, *The Peers of Spain & France* are bound to answer any *Commoner* that shall complain against them , without a *Plea* called *The Lords priviledge* : And in *Holland*, *Switzerland* & other more regular Governments , the *States* themselves are bound to answer : And is it not so in *England* , if the Law hath it's just current ? doth not the *King* answer by his *Attorney-Genl.* to all suits commenced against him ? And shall not the *Peers* be bound to answer , who are but Subjects ?

I could show many Reasons why the *Lords house* ought not to have

Have any priviledges or jurisdictions apart from the *Commons*; yet am very willing their *Lordships* should exercise & enjoy such their just priviledges as are declared & established by the consent of *Parliaments*: But when their *Lordships* assume to themselves more than to them of right belongs, 'tis high time, as I humbly conceive, that the *Commons* let their *Lordships* know that they are usurpers of Authoritie & Arbitrary power against the known Laws of this *Kingdom*.

This onely Reason shall I instance, viz. That the *Peers* of *England* do not possess a 20th part of all the Lands in *England* & *Wales*: which may be seen by a Survey taken in the severall Countys in the Year 1662. whereby it did then appear that the 170 *Temporal Lords* with the 26. *Spiritual* did not possess more Lands than to the value of 845000. rd by the Year, not allowing the severall Statutes, Mortgages, & other incumbrances, made to the *Commoners* on their *Lordships* estates: By which Survey it did likewise appear. That there were 70000 *Commoners* in *England* who did possess as their free-hold Lands, to the value of 8780000 rd; besides *Dean & Chapters* Lands, *Colledge* Lands, *Hospitall* Lands, *Corporation* & *Fabrick* Lands; which, if modestly cast up with the other, makes more than 29. parts in 30: but, if you will add the great stock going in trade, & also the value of the floating houses & Castles on the Waters which belong onely to the *Commons*, then their *Lordships* proportion will fall short of a 100 part.

But why do I trouble your *Honours* with this account, who dayly see by the Books in the *Exchequer*, that the *Peers* proportion in the Taxe of this Nation is inconsiderable to the *Commons*; and yet, as small as it is, many *Peers* have not, or are not able to pay what is taxed on them, but stand Debtors to the King to this day, as by *Sr. Robert Longs* Book doth appear.

But Some there are who objecting say, That, Although the *Peers* have not so great a proportion of Land as have the *Commoners*, yet their *Lordships* have reserved to their Titles of jurisdictions, Courts of Pleas & other Courts of honour in this *Kingdom*.

To which I answer, That 'tis very well known to the Sheriff of every County, That *The Lords* have not onely alienated their Lands to the *Commons*, but have sold away their *Birth-rights*: for I know that in many places in *England*, my Lord Duke & my Lord Earle, Viscount & Lord Baron do often suit & service to Mr. Mercer, Mr. Draper, Mr. Taylor, Mr. Barber-Chirurgion, & Mr. Vintner; but especially to Mr. Lawyer, Mr. Goldsmith & Mr. Scrivener, who now possess their Lordships, Court-Barons, Court-leers & the Lands annexed; Do not we dayly see that some of their Lordships are become Pensioners to their Stewards & Hostesses? But I shall forbear to speak any further on this particular untill I come to my Plea; And shall now proceed with my Narrative, in which I shall onely touch on some passages, & that very briefly; referring those who desire to be further satisfied to *Coffo. Philo.*

'Tis not unknown to many of this Hon^{ble} House that I was one sent over by Gen^l Monck with his Brother *Clarges* to *Breda* in the restauration of the King; & was there by ill fortune brought acquainted with the Lord Gerard, under whose Command I served as Clerck & Pay-master to the Kings Guard 8 years & more; during which time I was conscious in not discovering the Lord Gerard & others who dayly defrauded & cheated both the King & People, untill that Conscience flew in my face, & that I could no longer hold silent: For at that time when the Dutch came into the river of *Thames*, there came an order from the Gen^l, That 50 Men should march immediatly out of the Kings Guard to *Chattam*, The Lord Gerard & his Officers were but from 4 a clock in the morning untill 3 in the Afternoon in sending 50 Men out of 200 in the Kings troop, & at last were fain to send 2. supernumerary Life-guard-men, & my Brother which was my Clerck to make up that number: It would be too tedious a Story here to tell you the defects of the Guard, or to shew you how

How many young Gentlemen & old Officers have been undone by riding in that *Guard* , & how many poor Gentlemen have been constrained to rot for want of bread , haveing rid many months & then were turn'd out.

Gen^l. Monck having been enformed by one of our own Officers of the defects of the *Guard* , immediatly sent for me , & examined me on severall particulars , touching which I could not deny but that it was truth that was told him , always moderating on the behalf of the *Lord Gerard* & other Officers : After the *Generall* had done examining me , He gave me order to signifie his Commands to the *Lord Gerard* , therewith to tell his Lordship that if the *Guards* were not immediatly filled up & that with effectuall Men , putting out Footinen , Pages , Coachmen , Cooks , Grooms , & supernumerary Men which ride in the Troop for approbation , He would acquaint the *King* , & take another course with the *Lord Gerard* : In pursuance of the *Generals* order I acquainted the *Lord Gerard* with the Commands of the *Generall* , rendring them in the mildest sence I could ; for that the *Gen^l. & Lt. Gerard* , as all Men knew , were not well together at Court : The *Lord Gerard* hereupon fell into a grievous passion , & with his usuall way of imprecations swore that I was combining with the *Generall* to ruin him , but He would first ruin me ; & bid me tell that Drunken dull Sot that betrayed his Party , That He would have him & his Draggel-tayld-Dutchess go on cheating the *King* in his Stables , & not meddle with the *Guards* : Hereupon , finding the *Lt. Gerard* in such a passion , & continuing so next day , I then resolved to quitt my employment , & there fore demanded my moneys due to me both from himself & *Guards* ; which enraged his anger more than before , He swearing he would never pay me nor should the *Guards* ; Hereupon he commanded me to *Portsmouth* there to give my attendance , the better to manage his design which he began in that Garrison , charging me not

to stirr out of that Town untill I complied with his designs, swearing that he would call me to a *Council of Warr*, & hang me, for that He was a *Lieftenant-General*, & that I plotted with the *Gen^l* against him.

Hereupon I took advice of a Friend in that Garrison, who layd before me his *Lordships* behaviour in *Wales*, & his cruell mutiny & usage of the *old King* at *Newark*, which made me think it better to withdraw untill the return of the *Parliament*, to whom I resolved to address my grievances at their next meeting. But before I left *Portsmouth* I endeavoured a right understanding between his *Lordship* & the *Gen^l*; But the *Lord Gerard* was so puffed up with his new Honour of being a *Lieftenant-General* in that part of the Countrey, that I could not be admitted to speak to his *L^{d^{sh}}*, unless I would promise to make him more profit of the *Guards* than formerly; sending me word that I was a Fool, & so was *Monck* to think that the *King* did not know that he made great profits of the *Guards*; and therewith sent me an order to wait on him the next day & give my answer: Accordingly on the morrow I waited on his *Lord^{sh}*, thinking to find him in a better humour than when I last spake with him: But I found myself much mistaken; For his first salute was, That he was resolved to ruine me, & bid me go to my *Sot Monck*, & see if he could protect me. Upon this, I considered of his *Lord^{sh}*s passion, & withdrew, asking further advise of a Friend in that Garrison, who (having minded me of the former Actions of the *Lord Gerard* with *Mr. Fitton* & *Blundall* (with *John Cade* & *John Wright*) & others whom he had ruined without cause) counselled me to leave the Garrison, which accordingly I did the next day, & repaired to the *General*, & told him of some particulars which had happened to me, always presenting the best of his *Lordships* carriage in reference both to myself & others. And here give me
leave

leave to protest before *the Almighty*, That I never told the *Generall* one syllable of the foul language which the *Lord Gerard* gave him behind his back. Now after I had told the *General* something of my Case, He smil'd & told me, That He thought *Gerard* was mad, adviseing me to withdraw myself untill *Gerard* came to *London*, & then He would examin my business before the *King & Councill*.

The Lord Gerard missing me the next day, & hearing that I was gon for *London*, sent his threats against me to his *Hectors* in *London* who were at his *Lordships* command, being such persons, as, to gratify his *Lordship*, care not what actions they are put upon: Whereupon, fearing a pistol or a stab, I withdrew to a friends house, leaving a *Charge* in writing against the *L^d. Gerard* with the *General*; Upon which the *Lord Gerard* without any further consideration sent soldiers into my house, open'd my closet, took away all my books, bonds, bills & obligations; &, contrary to all Law, kept a formall guard in my house untill the coming together of *your Honours*; and then his *Lordship* was made sensible that He was not plundering in *Wales*, & must not do it in *England*: And then He sneaked off his Guard.

At *your Honours* meeting in *Parliament*, I presented, by my Wife, a *Petition*, in which I charged the *L^d Gerard*, & others to have cheated & defrauded *His Ma^{ty}* & his *Subjects*, & to have committed high misdemeanours against the *Commons of England*; imploring *your Honours* examination of the matter, & to grant your *Petitioner* such relief as to your grave *Wisedoms* should seem meet.

The Lord Gerard hearing of this *Petition*, & fearing himself not safe either in life or estate, if the matter should come to hearing, flies to the *Lords house*, & there procures an Order to siez & bring me to the Barr of the *House of Peers*, for a scan-

dalous seditious Libel delivered to the *House of Commons* : In
 obedience to which Order I appeared at the *Lords Barr* , where
 their *Lordships* asked me *first* , if I knew the Authour of the
Petition delivered by my Wife to the *House of Commons* : And *Se-*
condly , who was the Printer of the said *Petition* : To the *first* ,
 J told their *Lordships* , That I own'd the *Petition* delivered , as
 to matter of Fact , & was ready to prove every particular ; sa-
 veing matter of Form, which I desired to amend, if there was cause;
 & therefore humbly pray'd their *Lordships* dismissal: Their *Lord-*
ships hereupon told me , that J should have time untill the morrow
 to confess who was the Printer, & who was joining with me in
Petition : I told their *Lordships* , That I should say no other thing
 than that I said before ; & therefore prest their *Lordships* to dis-
 miss me. The next day following J was brought before a *Com-*
mittee of Lords , & there the same *Quæstions* were put to me, as
 were at the *Barr* : I told the *Committee of Lords* , That I humbly
 conceived that I had given the whole *House* my answer : They
 still prest'd me to answer to severall questions not relating to
 my *Petition* ; to which J desired to be heard by Council learned
 in the *Laws* : The *Committee* the next day reported to the whole
House : Whereupon their *Lordships* , without hearing of me ,
 proceeded to judgement ; & the next day sent the Serjeant at
 Arms to bring me to the *barr* of the *House* to receive
 judgement : The next day being brought to the *Barr* , The *Lord*
Keeper began to read their *Lordships* judgement ; Whereupon I
 humbly pray'd that I might be heard by their *Lordships* before
 they proceeded to judgment, J was made to withdraw , & upon
 the *Lord Keepers* motion to the *House* J was admitted to speak :
 I then told their *Lordships* , That I humbly conceived that I
 was a *Commoner* , & ought to be tryed for any matter of fact
 whatsoever.

whatsoever by my *Peers* , which were *Commoners* , & not by their *Lordps* : Secondly, J told their *Lordps* that J had a *Plea* ready in my hand to tender to their *Lordps* , on which I desired to be heard by *Council* , & that I was ready to try that *Paper* or *Petition* , which their *Honours* called a *Libel* , whether it was so or not ; and that if I did not prove every allegation in the said *Petition* to be true , J would stand to their *Lordps* judgements, & if true, J hoped their *Honrs* would encourage such discoveries, & punish the *Offenders*. Upon this motion , *The Lord Keeper* moved that I might withdraw , He being wholly against the *Houses* proceedings , & proposed to their *Lordps* that J might be heard: But it was carryed in the *Non-contents*, That I should not be heard : and thereupon was I called into the *House* ; and the *L^d Keeper* read the *Judgement* of the *House of Lords* ; viz.

„ That I should be committed Prisoner to the Fleet-prison ,
 „ & fined 1000^l Sterling to the King , & stand in the Pillory
 „ the next day , & have on the Pillory a Paper nayled ,
 „ with this inscription , *For printing & publishing a Scandalous*
 „ & dangerous *Libel* reflecting on the justice , honour , & dignity
 „ of the King , & reflecting on the honour of the *House of Peers* ,
 „ & the Person of the Lord Gerard a Peer of the Realm : and
 „ that a Copy of the *Petition* delivered to the *House of*
 „ *Commons* should be burned by the hands of the common
 „ Hangman.

This thundring judgement made such a noise in the Peoples ears , that many were the murmurs , and discourses against the *House of Lords* illegall & tyrannicall proceedings; by which the *L^d Gerard* & others were alarmed , especially hearing that many *Commoners* visited me in prison, encourageing me

me not to submit myself unto the *Lords*, but to have patience untill the remeeting of the *Parliament*, who were the very next day adiourned. Upon this was another illegall way & practise found out, which was, that I should be articted against at the *Council-board*, & by that Authority removed to the *Holy-Isles*, by which means I might be either privatly murdered, & so prevent my petitioning your *Honrs*, or else be compelled to a compliance.

Hereupon there was a Petition delivered against me to the *King & Council*: One Article in the Petition onely was for Treason, & the other Articles were for high misdemeanours: That of Treason was, *That I held correspondence with the King of France & States of Holland in the time of the Warr.*

This Petition being read, there was a Warrant sent to the Fleet-prison at 5. a clock in the evening in the month of Ianuary, That the next day at 9. a clock in the morning, The Warden of the Fleet should bring my body in safe custody before the *Council*, not mentioning for what cause or what was my crime.

This being such short warning, & the prison standing so far out of Town, I had no time to consult with Council or any friends, but wholly threw myself into the protection of the *Judge of Judges*, remembring what is said in *Matth. 10: 19. When they deliver you up, take no thought how or what ye shall speak: for it shall be given you in that same hour what ye shall speak. and in Matth. 5: 10. Blessed are they who are persecuted for righteousness sake: for theirs is the Kingdom of heaven.* In short,

Being brought before the *Council-board*, the Petition was read unto me, & the *Lords of the Council* pressed me hard to give my answer: I replied to the Board, that the Petition that was read against me was very long, & contained many Articles, some for Treason, as neer as I could guess, being

Being not so accurate in the Laws of the Land, & therefore humbly prayed, that before I was put to answer, I might have a copy of the Petition & order, & sufficient time to answer: J was bid to withdraw; & it was carryed in *Council* that J ought to have a Copy & time to answer: Whereupon I was called in, & *The Board* asked me how long time I expected to answer in? I desired 10. days, which was denied; & 4 days onely granted: J then prayed that I might have a copy of the Petition that day, which was granted but not performed untill the 3^d day; At the 2^d day of appearance I attended the *Council-board* according to their order; where *the Lords* asked me for my answer, J told their *Lordships* J had but one whole day to consider what to answer, & therefore prayed 4 days more: Hereupon *the Lords* threatned that they would do strange things against me for my contempt in not answering according to my own agreement: But at last I was bid withdraw, & it was again put to the Board, Whether I should have longer time, or whether J was not in contempt: but it was carryed, *That I ought not to be surpris'd in time*: So that, after much pressing, I got 2. days more: Then J was remanded to the Fleet-prison by an order of the Board; & that J should peremptorily answer on that day, or be in contempt:

Then going down the stairs with my two Keepers, One of the *Lords* run after my Keeper, & commands him to shew him his Warrant, that was for bringing me to answer, & finding his Name in the Warrant, said, I will take this to the Clerk to put out my Name, for J was not at the Order making; & so caus'd his Name to be cross'd out; & told the Clerk, He did not like the *Lords* proceeding against Carr: & said, He knew better *the 17th of Car. 1^o*.

The day of my 3^d appearance being com'd, I was called in before the *Council-board*, & asked for my Answer; I told them
That:

That I had it ready, & thereupon delivered it; Which was onely, A plain *Demurrer* to their Jurisdictions, grounded upon the known Laws of the Land; At which their *Lordps* were in great rage, & made me withdraw; and being called in the second time, *The Lords* pressed me to wave my *Plea & Demurrer*; and told me I should find Kindness; otherwise they could & would proceed to judgement against me severely, notwithstanding my *Plea*: To which I replied to the Board, That I was resolved to stand to my *Plea*; let the Board do their pleasure: Then the *Lords* commanded me to tell who was of my Council in drawing my *Plea*, & told me, if I did not immediatly give my answer they would proceed to judgement: I told their *Lordps* that I came not there to impeach any one, or to condemn myself: Whereupon J was bid to withdraw; and in the mean time One of the *Lords* came out into the Clerks room, & told one of my enemies in the hearing of a Friend, „ That He „ resolved not to meddle in *Carrs* business; for, said he, this is the „ second time I have been here, expecting to find the *Lord Keeper*, „ the *Gen^{ll}*, or my *Lord Roberts*, & other old *Lords*; but I find „ & understand, that they disapprove not onely of this proceed, „ but also of the dealings of the *House of Lords* in *Carrs* business; „ & you will find, said his *Lordps*, That the *House of Commons* „ will fall upon us, if we make ourselves above Law: Let *Gerard* „ & *Cartwright* & others acquit themselves fairly in the *Law-Courts*, „ & not put us upon *Starr-Chamber* practise; Whereupon this *Hon^{ble} Peer* acquitted himself from running into a *præmunire*, as have others done.

Being called in the 4th time, A wise & noble *Peer* asked me, if I owned the *Plea & Demurrer* that J delivered to the board; J answered, that my signing my *Plea* showed that I owned it; & therefore prayed a dismission: Upon which the *Lords* commanded the Clerk of the Council to deliver into my hand the

Plea

Plea & Demurrer, advising me to consider whether I owned all writt in the *Demurrer* : J answered , that I had often read it over , & had fully considered of every thing contained in the *Demurrer* ; & therefore I laid it down on the Council-board as my Act & Deed , & desired it might be entred ; & prayed a dismissal. *The Lords* upon this commanded me to withdraw ; & sent my *Demurrer* to the *Lord Keeper & Kings Council* , to advise if it were good : and after 3 hours attendance in the Clerks chamber, a Messenger brought me word that the *Council* was up, & that I might return to the Fleet : whereupon I asked one of the Clerks , what was ordered in my business ? The Clerk smiled , & clapt me on the shoulder , & said „ Well , *Honest Carr*, you „ are not likely to be sent a prisoner to the *Holy Island* ; your „ Enemies, said he , are mad, that the *Council* wil not proceed to „ run themselves into a præmunire. And here I must confess, that I had very fair play in the *Lords Arlingtons office*, & the Clerks of the *Councils offices*, after my first days-appearance ; for that I had great favour & liberty to peruse many papers that lay before the *Council-board* which concerned my business.

My enemies (finding that the *King & Council* would not proceed against the known Laws, nor exercise an Arbitrary power,) had no more wit than to think , that they might by large Swearing take away my life at *Common-Law* ; & therefore preferr'd many inditements against me in the *Kings-Bench* ; One was for Felony, in leaving my colours , & quitting *Portsmouth-Garrison* ; An other for Treason, for going out of England without the *Kings* leave, the other not worth naming. When news was sent me by a friend out of the *Crown-Office* of this troop of inditements, I then was resolved to Petition for a *habeas Corpus* to remove myself from my cruel usage in the Fleet, to the *Kings Bench*, that thereby J might force on my trialls on the said inditements ; To which end, I sent my Petition

to the *Judges* that were then in Town ; which *Judges* were so cowardly & corrupt , that They ventured rather to anger the *Judge of Judges* , & be perjured , than displease the *House of Lords* ; for they pretended , my Case was of a higher nature , than that they might grant a *habeas corpus* in it ; so that I was fain to wait untill the Term ; & then I petitioned the Court of *Kings Bench* ; but was much troubled to find a *Councellour* that durst venture to move for me ; for most of the eminent *Lawyers* & *Kings Council* were fee'd against me ; At last I found an honest , able , valiant *Member* of the *House of Commons* , *MR COLEMAN* of *Lincoln* , who undertook my cause ; & in full Court moved my business , delivering to the Court my Petition , & the cause of my imprisonment in the Fleet.

Now because some *Judges* have been so corrupt as to deny *habeas corpus*es , whereby many poor Men have not onely endured great misery , but have been starved to death in prisons , & the justice of their Cause never com'd to a hearing, I will set before you the just grounds & Law that commands the *Judges* to grant *habeas corpus*.

I say , That to deny a *habeas corpus* to any Man whosoever that craves it , let his cause be what it will for which He is committed , is , to deny him the benefit of the Law of the Land ; And this is excellently proved & illustrated by *Sr. Edward Cook* , in his *Exposition of the 29. Chap. of Magna Charta* : as you may see in the 2. part. *instit.* fol. 42 , 43. also fol. 186 , 189 , 515. & first *instit.* lib. 3. *Chap. 7. sect* 438. fol. 260. The oppressed Mans oppression declared pa. 1. 3. 4. & 4. Ed. 3. chap. 2. printed. in the *Peoples prerogative* pag. 6. See Ed. 1. 15. See 2. H. 5. chap. 2. & 11. chap. by which you may see that the Law of the Land is extream tender & favourable in the case of a Mans freedom & liberty : & therefore it hath appointed Officers & Ministers to deliver the Gaol three times

times a Year, or oftener, if need be: because in the eye of the Law the prison is a bad or hard mansion or dwelling: And besides that, All men committed for any trespass whatsoever, for which a man is not to loose life or member, shall be bailed; The Gaol, by the common Law of *England*, saith *Sr. Edward Cook*, being the pledge or surety of him that could find none other Bayl: And therefore by the ancient common Law of *England*, *Treason & Felony* (in case the Party that had committed it could find good Bayl) was Bailable: And in case the Prisoner be long detained in Gaol, & denyed Bail according to the Law, the Law hath provided a *habeas corpus* to bring his body before the *Judges*, that Bail may be taken according to the Law of the Land: For untill the *habeas corpus* be returned, it doth not judicially appear for what cause He is in prison; but upon the return it will appear: And if upon the return it doth appear, that he is imprisoned contrary to the Known Laws of the Land, the *Judges* are bound by their oaths, without any more a do, to release him, whosoever commands to the contrary: And if it appear that he is legally committed for a crime in Law that is Baylable, they are to bayl him; and if his crime be not Baylable, they are to return him back from whence he came: And all this clearly appears by *Sr. Edward Cook* upon the 29. chap. of *Magna Charta*. fol. 55. And by the *Judges* answer to the 25. Articles or Objections that *Richard Bancroft Arch-Bishop* of *Canterbury* exhibited in the Name of all the Clergy (then high enough) in *Mich: Term.*, in the 3^d Year of *King James*, to the Lords of the Privy-Council, against the *Judges* of the Realm; for encroaching (as they supposed) upon their *Ecclesiasticall Jurisdictions*: Where, in their 12th Article, they complain against the *Judges* in *Westminster-Hall*, for that they command & cause the *Sheriffs* to bring before them into their Courts, parties committed by
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the Ecclesiasticall Iudges to prisons, that by the Laws of the Land; (say they) they ought not deliver , untill the Ecclesiasticall Courts were satisfied , And yet by their own discretion set them at liberty , without notice thereof given to the Ecclesiasticall Iudges &c. Vnto all which , All the Judges of England & All the Barons of Exchequer , upon mature deliberation & consideration, in Easter-Term following, with one unanimous consent declared, „ That if the Party imprisoned be in Law notailable, yet We „ ought (say they) upon complaint , to send the Kings-writ „ of a *habeas corpus* for the body & the cause ; & if in the return „ no cause, or no sufficient cause appear , then We do (as we „ ought ,) set him at Liberty.

I will here prove that a *habeas corpus* is not by Law to be denyed to any Prisoner whatsoever, whatever his crime be , or by whomsoever committed.

First , I say , A Man in Execution for Debt is notailable by Law , & yet in Law an *habeas corpus* cannot nor ought not to be denyed to any such ; & so for all offences whatsoever : And amongst many other Remedies against unjust imprisonment, the Law of the Land gives this Remedié , viz. the Writ de *hominé Replegiando* ; & the writ de *ponendo in Ballium*.

Secondly , It is against the Judges oath to deny it ; in which Oath He swears to do æquall Law & execution of right to all people rich or poor , without having regard to any Person : & that they deny to no man common right , by any Letter from the King, or any other person whatsoever, nor for no other cause ; & in case any Letters come to the Iudge contrary to the Law , the Iudge is to do nothing by such Letters, but acquaint the King thereof, & proceed to execute the Law, notwithstanding such Letters: But a *habeas corpus* is part of the Law of the Land which the Judges ought to grant to all men that demand them : and if the Iudges deny it to any man that craves it , then the Iudges forswear themselves , & are liable

liable to be indicted for perjured persons ; upon Conviction of which they for ever forfeit their places, & are for ever incapable to be Councillours, &c. As appears by an *Act of Parliament of the 11. H. Rot. Parl. n^o. 28. m. & in 3. part. instituts fol. 224.*

Thirdly, To deny a *habeas corpus*, is against *Magna Charta*, & the *Petition of right* made in the 3. year of the King, & also the *Act* that abolished the *Starr-Chamber* made in the 17. year of Car. 1^o.

Fourthly, To deny it, is, to rob the people of their declared & undoubted *Birth-right*, viz. the Law of the Land : as appeareth in the 3. part instit. fol. 53. 55. & 1. part 60. dec. pag. 7. 38. 39. 77. 201. 278. 459. 650. 660. 845.

But here some ignorant Men do *Object* & say, That the *House of Lords* is above the Law of the Land, & their Priviledges unlimited.

I Answer positivly No: *The House of Lords* are not above the Law of the Land ; but that the Laws are as binding unto them, as unto the meanest men in *England*: As you may see in the case of *Robert Carre Earle of Sommerfet*, who was seized on by a Warrant from the *Lord Chief Justice Cook*, for being suspected to have had a hand in the poysoning of *Sr. Thomas Overbury*: And in the case of the *Lord Morley* & others. I observed not many Terms ago, in the *Lord Gerards case*, That *His Lordship* haveing threatned to make his Footmen cut off one *Mr. Corwels* nose, because He swore the truth in my Tryal against his *Hon^r*, The Gentleman hereupon (dayly expecting to be assassinated by his *Ld^rs Hectors*) moved, by *Mr. Coleman*, the *Court of Kings Bench* that the *L^d Gerard* might be bound to his good behaviour: upon which the 4 *Judges of the Kings Bench* declared every one severally their opinions, that *The Court* should grant a Writ to the *Sheriff of Middlesex*, to bring before them the body of the *L^d Gerard* to be bound to his good behaviour: and this was executed according to the *Assurt Warrant*; notwithstanding that *Mr. Jones* the *Lord Gerards Council* moved, that the *Lord Gerard* was a

Peer

Peer of England, & that the House of Lords were adjourned, & not proroged; so that the *House of Lords* were actually sitting with all their Priviledges. but this is most excellently observed by *Sr. Edward Cook* in his 4. part *instit. chap. High Court of Parliaments fol. 37.*

I will speak further of this when I come to my *Plea*; : and will now return to shew you, That upon *Mr. Colemans* motion, The Court awarded 3. severall *habeas corpus*es; & at last upon a third *habeas corpus*, which came with a good Fine & pænalty on the *Warden of the Fleet*, I was brought up to the *Kings Bench Court*, where the *Judges* reading the *Return*, in which was returned the judgement of the *House of Lords*, they smiled, & call'd to the *Kings Council* & *Sr. William Scroggs*, *Jones*, & other *Council*, which were fee'd against me, to shew cause why I should not be returned to the *Kings Bench*: Some of the *Kings Councell* told the Court that I was the *Kings Prisoner*, & committed by the *House of Lords*; & therefore pray'd that I might be returned to the *Fleet*; To which, *Judge Windham* told the *Kings Council*, that He wondred to hear such a Motion; „for (said the Judge) you „have indicted *Carre* in this Court in many indictments, some „*Treason & Felony*; & if ever you intend to try him, he must be „removed at the *Kings* charge, & here *Carre* petitions to remove „himself at his own charge, that saves you a charge & trouble; „& if *Carre* be quilty, he doth but hasten his own death, & „fulfill your desire: For my part, I must declare to my *L^d Chief Justice*, & the rest of my *Brothers Judges*, We are bound by our „Oaths to do justice equally between the *King*, & his *Subjects*; „& therefore I must tell you of the *Council* against the *Prisoner*, „That We are not bound to take notice of the *House of Lords* „proceedings. Then the *L^d Chief Justice*, reading the *Lords judgement* which was in the *Return of the habeas corpus*, need up, & com-

& commanded me to be brought into the Court, & then turned me over, & asked the Kings Council, if they had any thing to say to the severall indictments that were in Court against me? The Council replied, that they would take time to consider with the *whole Kings Council*; for at that time *The Attorney & Solicitor Gen^l*, & *Maynard* were not in Court: Vpon this I moved the Court, that I was ready to plead to the Inditements, & prayed, that my *Plea* might now be received, for that the Inditements were ready in the Clerk of the Crowns hands, & that I was willing to try them all in 12 days, & at my own charge, rather than to be kept so close a Prisoner in the Fleet.

The Court, upon hearing what was objected by the *Council for the King*, & my *Councils* Replys thereon, made a Rule, That the Inditements should be read, & that I should then be arraigned: And upon producing such a troop of *Inditements*, the *L^d Chief Justice* proposed to the Kings Council, That for shortening of time, & saveing much trouble & charge, He would have them to chuse out 3 of the most likely Inditements to try; & if none of them did hitt me, *His Lord^{sh}* left it to the Kings Council to proceed on the other or not; telling them that One of the Inditements was enough to ruin any Man, if proved: Hereupon the *Kings Council* consented that I should be arraigned on 3: which accordingly was don; & the Court set 14 days after to try them at the *Barr*, provided I brought them on at my own charge. And here, because I will shorten this *Narrative*, I will onely say this, That I had many witnesses at a great charge out of severall Countys, some 100, & severall 60 miles from *London*, & that my Tryalls at the *Barr* cost me much money; & That upon a full hearing I was acquitted by my *Courtrey*; after very hard, false, & malicious swearing: & I will onely instance the *L^d Gerards* evidence against me on the Inditement in open Court,

Court, & then come to my Plea: One Inditement was for leaving my Colours in Portsmouth, to which the L^d Gerard was sworn; And (after The Courts admonition to his L^dpp, to have a care, & mind well what He was about, & to consider that He was now swearing against a Mans Life) hereupon His L^dpp swore that I was a Souldier in pay, & in the Rolls of the Kings Guard; & this He affirmed on his Oath: The Court being onely Councel with me, for that I was allowed no Councel by the Law of the Land, I prayed the Court to ask his L^dpp that Quæstion once more: His L^dpp was the second time desired by the Court to repeat his evidence: whereupon His L^dpp could not forbear, but gave ill-becoming language in the Court; so that the Court reproved his L^dpp, & told him, that He forgot where He was; „for, „said the Judges, you are before the King, & therefore forbear your „ill language; It doth not appear yet, that Carre, the Prisoner „at the Barr is a Traytor & a Rogue, as you call him. After all the Kings evidence was heard, then J began, & proved by Sr. Stephen Foxes Rolls, Commissary John Bayns Rolls, & by the Rolls of the Excheqr, that my Name was not in any of the Rolls of the Kings Guard: Whereupon the L^d Chief Justice threw down the Inditement, & the Jury cryed a verdict, & so acquitt me presently. The next Inditement was for defrauding the King of 2785^{sd}—18^s—4^d in September 1667. & for 2785^{sd}—18^s—4^d in November 1667. And to this Inditement the L^d Gerard swore harder than before: Vpon which the Court asked when his L^dpp gave Carre his discharge for paying the Guards? His Lord^{pp} replied, in January 1667. Then My Councel on this Inditement had leave to speak; & therefore desired the Court to ask the L^d Gerard, if Mr. Carre & his L^dpp were good friends in January 1667. & whether Carre was then an honest Man to the King & his Guards? His L^dpp swore, Yes; for, said his L^dpp, here is his account & mine

in a Book in Court ; & then , said *his L^{dy}* , „upon my oath , „my Lords , I found him honest , & did not mistrust him till I „came to *Portsmouth*: (which was in *Iuly* following :) Here My Councel marked his *Lords* evidence , & desired the Court to take speciall notice , That *his L^{dy}* proves Mr. Carre an honest Man in *January* 1667. & yet maliciously indited Carre in *November* 1667. & *September* 1667. Vpon which the whole Court burst out into a Hum ; so that the *L^d Chief Justice* was troubled to hear such a great noise , & such a disorder as was then in Court ; & told the Tipstaffs , that if they & the Cryers did not keep more silence , & make a clear Court , He would commit them ; for there were great crouds of people both in the Galleries & in Court. So to give you no further trouble with the particulars of these Tryals ; I was acquitted on all 3 of the Inditements : and the other Inditements I quashed by motion in the Court of Kings Bench.

By this true Relation , I leave all honest indifferent Men to judge , how fairly the Lord Gerard perjured himself : And now I come to my Plea.

THE PLEA.

And first , As to matter of Law : I do say & affirm , That the Lords originally have no Jurisdiction over any Commoner of England what-ever ; either to try him , or pass Iudgement against him either for life , limb , liberty , or estate.

22. That

2.^b That in case the *Lords* had had jurisdiction over me, (which I do deny) yet there was not the least legall formality in their proceedings with me; And therefore voyd in Law: they summoning me before any impeachment or inditement was filed against me: Which was, & is expressly against the fundamentall Common Laws of the Land; & also against the 29. *chap. of Magna Charta*; & the Statutes of the 5. E. 3. 9. & 25. E. 3. 4 & 28. E. 3. 3. & 37. E. 18. & 42. E. 3. 3. which Statutes are the true Expositors of the 29. *chap. of Magna Charta*: And what is meant by *Lex terræ* there, all those Statutes shew; viz. That no Man be put to answer without presentment before Justices or matter of Record, or by due process or writ Original, according to the old Law of the Land: and if any thing be done to the contrary, it is void in Law, & holden for error: All & every of which Statutes are confirmed by the *Petition of Right*, & by the Act of the 17 of Car. 1^o.

3.^b I say, That the *Lords* do not sit in their House by any power or Authority derived from the Peoples free Election & choice; who cannot in justice, reason, & æquitie be bound, but by their own free consent: Neither in reason, justice, or æquitie can any be Law-makers to them, that are not thereunto justly empow'ed by them; which the House of *Lords* are not in the least; but are meerly & altogether the Creatures of the King; being the meer issue of his Will, sitting by his Command, who himself, in reference to the bodies & estates of the people, is limited & bounded by Law:

As for instance, By the 29. of *Magna Charta*, the King cannot imprison any man, or dispossess him of his free-hold, liberties, or free customs; or out-law him, exile him, or any other ways destroy him, but by due process of Law according to the Law of the Land: Neither can he sell, deny,

or

or deferre to any man either justice or right. And by the Statute of the 2. E. 3. 8. & 14. E. 3. & 14. & 11. R. 2. 10. The King is tyed, That he shall not hinder, disturb nor delap common right & justice according to the Law of the Land, by any Command under the Great Seal, or the Little Seal; neither by any Letters of his Signet or Privy Seal. And by the *Petition of Right*, All those Laws & Liberties are not onely confirmed, but 'tis there enacted, & fully declared, That No man be adjudged or condemned but by the Laws already established, & declared: And that all the Administrators of the Laws of England, & all other of the Kings Ministers shall serve him & the Kingdom according to the declared Laws thereof & not otherwise. And by the *Act of the 17. Car. 1.* which abolished Ship-money, & the Starr-Chamber, & rectifyeth the Council-board, All & every the particulars of the said *Petition of Right* are not onely confirmed, But it is enacted further, That Neither his Ma.^{tie} nor his Privy Council have or ought to have any Jurisdiction, power, or other Authority, either by English Bill, Petition, Articles, Libels, or any other Arbitrary way whatsoever to examine or draw into question, determine or dispose of the Lands, Tenements, Hereditaments, Goods Chattels of any the Subjects of this Kingdom; but that the same ought to be tryed & determined in the ordinary Course of Law: Which last clause is extraordinary pertinent to my purpose, that is, that the ordinary Courts of Justice, & the ordinary Courts of the Law are to be Tryers of all Causes & differences betwixt party & party. And by the same Act, there is a Remedy provided for any Man that shall illegally suffer imprisonment, or hereafter be committed, or restrained of his Liberty, by the Command or Warrant of the King himself, his heirs, or Successours, in their own person:

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Yea,

Yea ; & the *Kings Oath* that He takes at his *Coronation* , ryes him to govern his people according to the established Laws , & to preserve unto them their Liberties & freedoms. And excellent to this purpose is *Sr. Edward Cooks Commentary upon the 1. of E. 3. 15. chap.* but especially his *Commentary upon these words* , viz. *Or Commandement of the King.*

First , said he , „*The King* is a Body Politique , & cannot „command but by matter of Record : for the *Kings Commands* „& the *Laws Commands* are all one : for the *King* must com- „mand by matter of Record according unto the Law.

„*Secondly* , When any Iudiciall act is by *Act of Parliament* re- „ferred to the *King* , It is always understood to be executed in „some Court of Justice , according to the Laws.

The Opinion of *Gascoign Lord Chief Justice* is notable in this point ; Who saith , that „*The King* hath committed all his power „judiciall to divers Courts : as , *the Kings Bench* is *coram Rege* ; & „others *coram Iusticiariis* : therefore the Laws say , *By the command-* „*ment of the King or his Iustices.*

Hussey L^d Chief Iustice reports , That *Sr. Iohn Markham* pleaded to *King E. 4.* That the King could not arrest any man for suspicion of Treason or Felony , as any of his Subjects might : because , said He , „if the King did wrong , the Party could not have his „*Action* at the *Common-Law.*

The same was pleaded to *King Rich. 2.* Whereupon all the Iudges were consulted with ; & as one voice they gave their Answer , „That the *King* cannot do any thing by command- „ment ; but must do it by Writ , or by order , or rule of some „of his Courts of Justice : As you may find it recorded *1. R. 2. chap. 12* & *14. 8. 4. chap. fel. 19. & 24. H. 8. chap. 12.* On which Statutes , said *Bracton* , „The King can do nothing but what He „can do by Law. And the *L^d Chief Iustice Cook* saith , „That by the „*Command*

„*Command of the King*, is to be understood, as much as to say,
„by the *Kings Courts of Justice*.

And we find upon Record, That the *Parliaments* of England have been very severe against all persons whatsoever that have subverted the *Laws of the Land*.

As for instance, The impeachment or charge in full *Parliament* at the dethroning *King Edward the Second*

The many *Articles of impeachment* of the dethroned *King Richard the Second* in full *Parliament*: Both which *Kings* were charged in the *Articles of impeachment* for *having perverted the due course of Law, Justice, & Right*; & that they destroyed men by *informations*, & without *Legall examination & tryalls*; & that they had declared, that the *Laws of the Kingdom* were in their own breast.

And we likewise find, That the *Parliaments* of England have not spared their own *Members*, who were either *Advisers*, or *Abettors* in giving advice to any *King* to subvert the known *Laws*; but have executed the severest of judgements on them, as they have been discovered. I will name 4. or 5 *Examples*: viz.

The impeachment against the *Lord Chief Justice Tresillian*, & his brother-Judges, *Fulthorp, Belknap, Carey, Hott, Burge & Lofton*, & others of the then *Privy-Council*; & also the then *Ld Major of London*, who had set their hands to judgements in subverting the *Laws of the Land*, & advanceing the *Kings will & commands* above the known *Laws of the Kingdom*.

The impeachment against *Cardinael Woolsey*, in H.8. Recorded in the 4. part of *Cooks instit. fol. 89. 91. &c* in which He is charged with *Arbitrarness*, & adviseing the *King* to subvert the *Laws*.

The impeachment against *Judge Thorp*, in Ed. 3. time.

The many *Judges* executed in *King Alfreds time*, for adviseing, & giving illegall judgement contrary to the known *Laws*.

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The inditement of the 2 grand & notorious Subverters of the Laws & Liberties of England , Empson & Dudley Privy-Councillours to H. 7. recorded in Cooks 4 part Instit. fol. 198. 199. fol. 41. *ibid.* & 2. part instit.

Or the impeachment of the *Ship-money-Judges* , & *Monopolies* ; who did as much as in them layd , to destroy all the properties of all the men in England.

4.^b I say , That if the King the creator of the Lords be thus restrained by Law , as He is , that He shall not do to the *Freemen of England* what he pleaseth , nor exercise an Arbitrary , Tyrannicall , illegall power over their Lives , Liberties , or estates ; Then , I say , 'tis impossible for the King to give unto the Lords the exercise of an Arbitrary , Tyrannicall , illegall power over the Lives , Liberties or estates of the *Commons of England* : For it is a Maxime in Nature , *There is no being beyond the power of being* . And I am very confident that the Lords are not able to produce any solid Testimony that ever the King gave them any such power. And though I grant , that the King to the Judges gives such power as He cannot , nor doth in his own Person execute , yet , I say , that is always a power not flowing from his own will , but limited by Law , & by which He is Authorised so to do by *Acts of Parliament* . And I am sure , by the words of the Writ by which He summons them to sit in *Parliament* , as it stands printed in a Book called , *The manner , of holding Parliaments* , page 1. (which Writ is the foundation & root of their power) all the power that is given them by that Writ , is , to come to the *Parliament* to conferre & treat with the King , or afford their councill of certain hard & urgent affairs concerning the King , the State , & the defence of the Kingdom of England , &c.

But my pretended offence was touching none of these things ; but , at the most , was meerly an Action or offence tryable at the

the Common Law , in case J could not have proved my Petition : as appears by *Cooks 5. part Reports de libellis famosis* : And besides this , *The Lords* about me had no conference, nor treaty with the *King* their Prerogative-fountain , as by their Writ of Summons , which is the foundation & ground of their power, they ought to have: And therefore the *Lords*, not onely by the Common Law , but by their own Law & principles , had not the least ground to pretend a power or jurisdiction in the least in my cause.

§. 5. I say, That the *Lords* could not by Law, summon me by Warrant to come to their *Barr* , & to answer such things as were set forth in a *Petition presented by me to the House of Commons* ; which *Petition* their *Lords* intituled a Pamphlet or Scandalous Libel: Now admit that *Petition* or *Libel* were mine , & full of scandals in the highest nature , yet *Libels* & *Scandala Magnatum* are not to be tryed by the *House of Lords* ; but are to be tryed , now the *Starre-Chamber* is down , onely by an *Action* at the *Common Law*: As appears by the *5. part of Cooks Reports* , page 125. & the 13. H. 7. *Kelay* 11. *Eliz. Dier.* 285. & the 30 *Affize-Plea* 19. All which is fully confirmed in the 17. *Car. 1^o*. Therefore I do averre , That the *Lords* have their Remedie , in case of Libelling , onely at *Common Law* : where there is a Writ & an *Action* by the Law ordained *de Scandalis Magnatum* ; As also for *Libels* tryable onely by a *Jury* upon an *Inditement* at *Common Law* , & not otherwise. And this was practised by some of the discreetest *Peers* in our time ; as , *The Marquess of Dorchester*, who brought his *Action* against a *Commoner* at the *Common Law* for a *Libel*, where his *L^d* recovered great damages. Likewise the *L^d Viscount Hallifax* & others took the same course at the *Common Law* , & not otherwise. And this way seems to be very clear & evident by the *Statutes* 3. E. 1. 3. 3. & 37. E. 3. 18. & 38. E. 3. 9. & 42. E. 3. 3.

E. 3. 3. & 2. R. 2. 5. & 12. R. 2. 11 None of which, I am sure, give the *House of Lords* any cognizance of my pretended crime : and therefore for them to meddle with me, haveing no Iurisdiction of my cause, it being neither about Errour, nor delay of Iustice in inferiour Courts, Their proceedings are thereupon all *coram non Iudice*, & so void & null in Law : It being a Maxime in Law, That that which from the beginning is not valid, can never be made good by tract of time : or, Those things that are begun from an evill Principle, can never attain to a Legall issue.

6.^b I say, That no man, what ever he be, is to be imprisoned, but by the established Laws of the Land. They are the very words of *the Petition of Right* : but there is no established Law for the Iudgement of the Lords in any thing, where the King their Creator is not concurrent : as appears by the *14. Edward. 3. 5.* For the Lords, as I said before, are onely there, not by any Election or power from the People; but as persons of Honour created & made by the will of the King, to assist him. For in the Writ of Errour, wherein lyes the main & principall power of the Lords, there must be a Petition to the King for the allowance thereof : & the King must give them a particular Commission & power to take cognizance of it before they can have Iurisdiction of it : As is clear & plain by *the express words of the 14. Edward. 3. 5.* Which Statute is the principall strength & Basis of the Lords power. But my Case is neither of Iustice in another Court, nor corruption of Iudgement in another Court, which are all the Causes the Lords have Iurisdiction of by Law, which is as binding to them, as to any other Court of Iustice in England : as is clear by *the 4. H. 4. 23.* Which Statute positively declares, **It is a subversion of the Law of the Land for the Lords originally to take cognizance of Causes, or to over-rule the just & ordinary proceedings of the Law in other inferiour Courts.**
And

And this was fully pleaded at the *Lords Barr*, in the remarkable case of *Limby* against *Alderman Langham*: Vnto which *Plea* concurred the Opinion of all the *Judges* in England; which they were commanded to give by the *Lords* speciall command. I might here cite the *Duke of Espernoons* case, & many other cases & *Pre-fidents*, lately cited by *Mr. Pemberton* & *Mr. Offly* before this *Hon^{ble} Assembly*, upon the examination of the *Petitions* of *Mr. Fitton*, & my own: But I need not give you that trouble; for I find by your *hon^{ble} Votes* made in the business of the *East-India Company*, That it is your noble & just Resolution (as Men well known in the *Laws of Land*, & performing the Trust reposed in you,) to maintain the weal & safety of the people of England, against all usurpers whatsoever.

7.^b I say, That there was no *Petition* to the *King*, nor any Commission of His granted to the *Lords* to authorize them to meddle with me: & therefore all their proceedings against me are illegall from first to last in the highest nature. For it plainly appears by the *Law of the Land*, That no man shall be put to answer without presentment before *Iustices*, or matter of Record, or by due process & Writ Original, according to the *Law of the Land*. And this is clear by severall Statutes, viz. 5. E. 3. 9. & 25. E. 3. 4. & 28. E. 3. 3. & 37. E. 3. 18. 42. E. 3. 3. and the *Petition of Right*. & the 17. Car. 12. & by the exposition of *Sr. Edward Cook* upon *Magna Charta*: but not any of this was done in my case: for the *Lords* summoned me *Ore tenus*, before any charge or Writ was filed against me, & examined me *viva voce* upon *Interrogatories* against myself without a Jury of my Peers; nor was *Council* or *Witnesses* heard or examined on my behalf, which makes their proceedings with me totally illegall & most unjust.

8. *b* I Object against the illegall proceedings of the House of Lords with me from the 29. chap. of Magna Charta, & the 3. E. 1. 6. & the Petition of Right; which expressly declare, That no Man is to be judged but by his Peers, & by due process according to the Law of the Land. And this appears in *Clarks Case*, in the 5. part of *Cooks Reports*: where in his Exposition of Magna Charta, he saith, That, By the Words, viz. By his Equalls, is meant, Men of his own Condition, Commons onely being Peers to Commons, As Barons of Parliament are Peers to Barons of Parliament. 2. part. instit. fol. 28. 29. 46. 50. Where also *Sr. Edward Cook* declares, what Titles they bear that are comprehended within the Names of Peers of Parliament; & also what Titles they have that are comprehended within the Names of Commoners. There are many Cases to clear this; I will name onely One, & that is *The Case of Sr. Simon de Berisford*, in the 4. E. 3. Rot. 2. The substance of which Record, is, That *Edward 3.* in his own Person did charge the house of Lords to give right & lawfull Iudgement against *Sr. Simon de Berisford*, for his Treason & murder, in murdering his Father King *Edward the 2d.* But the Lords to the King in Parliament said All with one voice, „That „the aforesaid *Sr. Simon* was not their Peer; wherefore they were not „bound by the Laws to give judgement against him. Yet nevertheless at the Kings importunitie they did: But at the same time, it was assented, agreed, & enacted, (saith *Sr. Edward Cook* in 2. part Instit. fol. 50.) by the King & all the Grandees in full Parliament, That that Iudgement should never be drawn into example or consequence for the time to come: and they gave their reasons of it, because it was against the Laws of the Land for them to judge those that were not their Peers & equals. From whence I observe, That, if it be illegall for the House of Lords with the Kings presence, consent, & concurrence, as they here confess, to condemn *Sr. Simon de Berisford*, for Treason & murdering the King (because He was none of their Peers) although vigorously put upon it by the King on the behalf of his Father, Which King in his own person sate, & concurred

red with them in it , much more is it unlawfull for the Lords to presume to pass Judgement upon Me a Commoner , for a triviall supposed case , without the Kings presence or concurrence with them , which by their own Principles, & by the Principles of Law, is yet in force, & gives life & power to all such their judiciall Actions: And therefore All their proceedings against me are illegall & void in Law.

9.^b Another Argument against the Lords proceedings with me, is, That by the Law of the Land , no Man is to be Judge in his own case: as appeareth by the 8. H. 6. fol. 21. El. Dier. 220. & Doctor Bonhams case , 8. part of Cooks Reports. Yea and An Act of Parliament in such a Case hath been judged void in Law. Therefore the Lords ought not to have judged mine; for that it concerned themselves, or at least, the L^d Gerard, who, with other of his fellow-Lords, were not onely Partys , but Complainants, persecutors, witnesses, Jury & Iudges: which practise is against all the Laws of England , & the forms thereof: & was a greater Act of injustice rhan ever I heard was don either by the Starr-Chamber, Council-board, or High Commission Court, in the days of the greatest oppression & Tyranny. And J may justly conclude, That, if the Lords Judgement were binding in my case , then a few Lords would bind, not onely Me , but all the Commons of England , who all one after one may be so served by them as J am, & that without any hope of redress in the world (which both Law & Reason abhorr's) either by Writ of Errour or appeal, Attaint, or certificate of Affize to any Court whatsoever, no, not to the Parliament itself; for then it would come before themselves again, who would never condemn themselves or their own decrees.

And if yor Hon^{rs} suffer the Lords to exercise such an Arbitrary, illegall Tyranny as they have don upon me; & without all grounds rules or forms of Laws , suffer them to send for whom of the Commons of England they please , & at their will & pleasure condemn them in what & how they please, then the House of Com-

mons stand for meer Cijphers , the *Judges* in *Westminster-hal* for Cijphers , & all the *Laws* in *England* are Cijphers : And then We the *Commons* of *England* are become worse than the *French Slaves* , or any other slaves on the whole earth where *Christianity* is professed : And by this practise the end of all *Government* is overthrown, viz. the weal & safety of the people : Yea , & hereby the people of this *Kingdom* are left without all means to preserve themselves ; if you suffer the *House of Lords* , without controll , to exercise at their pleasure such a power over the *Lives* , *Liberties* & *estates* of the *Free-men* of *England* , as (I confidently averr ,) cannot be legally nor justly exercised by the *King* , *Lords* , & *House of Commons* joined & agreeing together , who are (when the most is said that can be said of them) but *Magistrates* , as all other *Magistrates* are ; appointed for the protection & preservation , but not the ruin or destruction of the people . And therefore if the *Lords* were able to shew me as many *Presidents* as would fill *Westminster-hall* , that they have don to others as they have don to me , I value them no more , in comparison to the severall *Acts of Parliament* , & the *Common Law* of the *Land* which I have cited , (which are point blank against their *Vsurpations*) than I value the dirt under my feet . And I say , That if the *Lords* in their *House* can make *Presidents* to destroy *Acts of Parliament* , & pluck the fundamenrall *Common Law* of *England* up by the roots , yea , such *Acts* as have been confirmed by 30 *Parliaments* ; Then may the *Commons* of *England* conclude , That *yor Honrs* sit in the *house of Commons* onely as Cijphers , not having power to preserve the weal & safety of the people .

I will not , nor need not , I hope , give you the trouble of citing many *Presidents* , or the many *Acts of Parliament* , that do illustrate & declare your great jurisdictions , power , & trust imposed on you by the *Commons* of *England* , for I take it as granted , that they are printed in your hearts & resolutions , as well as in our *Law-books* .

There is a great *Objection* which the *Lords* pretend against me , & say , was a ground of their proceedings , viz. That I contemned their *Jurisdiction* ; & thereupon , say they , Contempt of a Court , by the Law.

Law, subjects a Man to fine & imprisonment.

To w^{ch} I *Answer*.

First, I do absolutely deny that I did either contem, or affront their Court or Jurisdictions: for I obeyed their Writ of Summons, & with all respect & complement came to their *Barr*; which was more than by Law I needed to have don; where being examined upon Interrogatories against myself, I pressed hard to be dealt legally with, & to see my Charge in writeing; which was denyed, contrary to all Law & Justice, against the liberty of the Subject, & unfit to continue upon Record.

2.^b I say, That the *House of Lords* was no Court to me in my Case, having no jurisdiction of the Cause: it being not any of the Causes, that they *by the 14. Ed. 3. Chap. 5.* have jurisdiction off: & if it had, yet by that Statute they could not meddle with me without the Kings concurrence & his speciall Commission.

3.^b I say, That to affront, contemn, or abuse a Court that hath no jurisdiction of the Cause, for which the Party is convened before them, I say, by Law, is neither fineable, nor imprisonable. As for instance, if a *Court of Sessions* quæstion me for my *Free-hold*, & I refuse to answer them, & give them contemptuous words for meddling with that which by Law they have no jurisdiction of; They may by Law bind me to my good behaviour; but cannot fine or imprison me or disfranchise me of the priviledges of an Englishman. And this, you find, holds good in the *Court of Common-Pleas*; where, if they go about to hold *Plea* of murder before them, if the Party refuse, it is no contempt of the Court; because They have no jurisdiction over such Cases: And pertinent to this purpose, is *Baggs Case* in the 11 part of *Cooks Reports*. So that, I say, That the *Lords* assuming over me a power of jurisdiction without Law, or the Kings Commission, according to the form of the Statute in that behalf, are no Court to me in my Case, nor capable of the Cause in controversy: And therefore I say again, in a double sence, they had not the least ground or colour in Law, either to punish, fine, or imprison me.

But

But meethinks, I hear 2 Wife & learned Peers argueing, as once they did with One of the *House of Commons*, citeing for Law, & as a President, the case of *Thomas Cromwel Earle of Essex* in the 32 of H. 8. Who, *their Lordps* said, was condemned of high Treason, & yet was never brought to answer in any of the *houses of Parliament*; which is very true: But *their Lordps* had learned but a piece of the Story. For it seems they had not read *Sr. Edward Cook* in his 4. part instit. chap. High Court of Parliament. fol. 37. where, speaking of that Attainder, He saith, „ *Let Oblivion take it away, if it may be; if not, however let silence cover it:* „ for (saith he) the more high & absolute the jurisdiction „ of the Court is, the more just & honourable it ought to be in their „ proceedings; & to give examples of Iustice to inferiour Courts. Which kind of proceedings of the *Parliament* with the said Earle, He condemns, as altogether illegall: and cites the 29. chap. of *Magna Charta* &c. to prove it to be against the Law of England: And to prove it to be against the Law of God, He quotes *Gen. 3: 9 18: 21. & Deut. 17: 10. & 19: 15, 17. & Iosh. 7: 19, 20, 22, 23. Judg. 20: 3, 4. Iob: 7: 31.* And that it is against the Law of Reason engraven in the hearts of Heathens, He cites *Acts. 25. 16, 27.* And therefore in page 14. *ibid.* declaring the danger that ensueth to the Kingdom, when any of the *Maximes* or fundamentall Laws of the Kingdom are altered, as we see 'twas very great by *Empsons & Dudleys* rigid executing that unjust *Act of Parliament* of the 11. of H. 8. He used these words, *A good Caveat to Parliaments, to leav all Causes to be measured by the golden & straight Metwand of the Law, & not to the uncertain & crooked cord of Discretion or will of pleasure.*

Lastly. I say, 'Tis irrational for the house of Lords to endeavour the trying of any *Commoner* at their Barr, who is none of their Peer or æquall: for that All men know, (that well know the Laws of the Land,) That if the house of Lords would try One of their own Members, being a *Fellow-Peer*, for any crime or misdemeanour, & should

should form themselves to the number of 16, or 12, (under which number they cannot be) † and then act in the nature of a *Grand-Jury* or *Petty Jury*, & so become *Judges* of matter of Fact yet they must have joined to them a *Judge* of matter of Law; & that must be a *Lord High Steward*; (which they had not in my case:) And that *Ld High Steward* must be Authorized by the *Kings Commission*: as was lately seen in the *Tryall* of the *Lord Morley*, where the *King* authorized the then *Lord Chancellor* by his *Commission* to be *Ld High Steward* during the said *Tryall*, & no longer: Neither hath there been any *Ld High Steward* since or before in this *Kings* *Raign*.

But on the contrary, the *Lords* have no ground or *Authoritie* for the forming themselves into a *Grand Jury* or *Petty Jury* for the trying of any *Commoner* for any matter or thing whatsoever, though they had a *Ld High Steward* joined to them: but the *Commons* are to be tryed according to the severall *Acts of Parliament*, which not onely point out the way & method of the tryalls, but also declare the reason thereof; as you may read in severall *Parliament-Rolls*: I will cite onely One; And that is, where the *Petition* & *Answer*, which make the *Act*, are set down together; viz. 42. E. 3. Rot. 12.

Item, Because that many of your *Commons* are hurt 42
and destroyed by false *Accusers*; who make their accusations more for their revenge and particular gain, then for 24
the profit of the *King*, or his people; and those that are
accused by them, some have been taken, and others are
made to come before the *Kings Council* by *Writ*, or other
Commandment of the *King*, upon grievous pains, con-
tract

† And this you may see in the 10. E. 3. H. B. Brooks tit. Tryalls 142, where 'tis said, that if a *Pety* of the *Realm* be arraigned at the suit of the *King*, upon an inditement of murder, he shall be tryed by his *Peers*, that is *Nobles*; but if he be appealed of murder by a Subject, his tryall shall be by an ordinary *Jury* of *Freeholders*.

contrary to the Law: That it would please our Lord the King, and his good Council, for the just government of his people to ordain, That if hereafter any accuser purpose any matter for the profit of the King, that same matter be sent to the Justices of the one Bench, or the other, or the Justices, to be enquired and determined according to the Law: And if it concern the accuser or party, that he take his suit at the Common Law; and that no man be put to answer without presentment before Justices, or matter of Record, or by due Process, and original Writ, according to the ancient Law of the Land; And if any thing hence forward be done to the contrary, that it be void in Law, and held for Error.

Here, by due Process and Original Writ, according to the ancient Law of the Land, is meant the same thing, as, *Per Legem Terræ in Magna Charta*; and the abuse was, That they were put to answer by Commandment of the King.

The Kings Answer is thus:

Because that this Article is an Article of the Grand Charter, the King will that this be done as the Petition doth demand.

By this appeareth, that *Per Legem Terræ in Magna Charta*, is meant by due Process of the Law.

Therefore from all the Premises, & Authorities before mentioned laid together, I draw this Conclusion; viz. That I was illegally punished, fined & imprisoned by the house of Lords: And that their whole proceedings against me were a subverting of the known & declared Laws of the Land; And, I humbly conceive, a High breach of the Priviledges of the Commons of England, & may prove of dangerous Consequence, it continued upon Record.

Lay

Lay to heart, I beseech you, *O ye House of Commons*, That Neither yourselves, nor your Children can plead any immunitie or securitie from the Cruelty & bondage of the *House of Lords*: If you be slack or negligent in relieving the Oppressed out of the hands of those that are too strong for them, remember that which *Moses* charged the *Judges & Rulers* of the people of old; viz. *To hear the cause & complaints of their Brethren, & to judge righteously between every Man & his brother: & that they should not respect persons in judgement; but that they should hear the small as wel as the great; & that they should not be afraid of the frown of any man: for, saith he, in Deut. 1: 16, 17. the judgement is Gods. and when the Righteous are in Authority, the People rejoyce; because the Righteous considereth the cause of the poor. And the Land is established by judgement. And we find that God styles himself a God of Judgement. Isa. 30: 18. And He also declares himself to be a God that loves judgement. And as God is so delighted in justice & judgement, so on the contrary, God as much declares how exceedingly He abhorrs those that turn judgement aside, & commit mighty sins in afflicting the just. Isa: 1: 23, 24. Jer. 5: 28, 29. Amos. 5: 12. Mic. 3: 9, 11. Zec. 8: 16, 17. and in Prov. 29: 2. he saith, that when the wicked bear rule, the people mourn; because they regard not the Cryes of the oppressed, nor understand judgement. This is the impeachment of the everlasting God against all Princes, Parliaments, Magistrates & Judges, who refuse or neglect their duty in relieving the poor & distressed.*

And I humbly offer to yor Hon^{rs}, that if you suffer my Case to stand upon Record, according too the *Lords judgement*, Whether then the *Lords* may not to often cite *Carr's Case* as a *Precedent* against the Priviledges of the *Commons of England*.

Now for as much as you see, That both the *Laws of God & the Laws of this Kingdom* do abhor, & have severely punished (above all Persons) *Judges & Magistrates*,
who

who have violated their *Trust*, & such as endeavoured, as much as in them laid, to destroy the *Liberties* & *properties* of the *People*, whom by *Law* they ought to have preserved. And for as much as *My Sufferings* are unparalleled, & my prejudice sustained thereby altogether unreparable, having lost not onely a considerable estate, but am become wholly deprived of means to support myself, my *Wife*, & small *Children*; as also having suffered, & still being likely to suffer a long imprisonment (or worse) being not limited, but left to the *Kings* pleasure; unless the judgement of the *House of Lords* be vacated, & such other Relief given as your *Grave Wisdoms* shall think meet, I hereupon humbly submit the whole case to *Gods* gracious guidance of your *Councils*. So subscribes

Your distressed *Fellow-Commoner*, and most
humble & devoted *Orator*

WILLIAM CARRE.